

**Notice of Allowability**

Application No.

09/720,382

Examiner

Keith Hendricks

Applicant(s)

ROSS ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE of 10-22-03.
2. ☒ The allowed claim(s) is/are 1-9 and 11-15.
3. ☒ The drawings filed on 12-21-2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____    |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No. _____  | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment         |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9 <input type="checkbox"/> Other   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Antoinette Konski on December 09, 2003.

In the specification:

At the top of page 1, before the first line, please insert the following:

--- This application is a 371 of PCT/IE99/00058, filed June 22, 1999. ----

In the claims:

*Please amend claims 1-2, 12 and 14 to read as follows:*

1. (Amended) A process for the production of a spray-dried concentrate comprising lacticin 3147, for use as a food ingredient, comprising:
  - (a) inoculating a food grade milk or dairy based medium with a lacticin 3147-producing strain of bacteria;
  - (b) fermenting the inoculated medium,
  - (c) adjusting the pH of the fermentation to a pH ranging from 6.3 to 6.7;
  - (d) inactivating the bacteria within the fermentate; and
  - (e) evaporating the fermentate of step (d) thereby producing the lacticin 3147 concentrate for use as a food ingredient.

2. (Amended) A process as claimed in claim 1, wherein the medium of step (a) is selected from the group consisting of milk, reconstituted dairy-based powders, reconstituted demineralized whey powder, reconstituted skimmed milk powder, reconstituted whey protein concentrate powder, pasteurized whole milk, and Cheddar cheese whey [~~reconstituted yeast powders, and synthetic laboratory-type media~~].

12. (Amended) A spray-dried food-grade milk or dairy based powder containing lacticin 3147 having the ability to inhibit organisms which are not resistant to lacticin 3147, and having an activity of greater than about 20,000 AU/ml.

14. (Previously Amended) The food product as claimed in claim 13, wherein said product is selected from the group consisting of an infant milk formulation, a sauce, a mayonnaise, a dessert [~~including a custard~~], a tinned food, a yogurt, a soup and a bakery product.

The following is an examiner's statement of reasons for allowance: Applicant's comments at pages 8-10 of the response of 10-22-03 were deemed persuasive to overcome the art of record. The amendments indicated above were made to more clearly define the invention and to correspond to the arguments provided in said response, including the use of a food grade milk or dairy based medium with the bacteria.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
KEITH HENDRICKS  
PRIMARY EXAMINER